

**SEPT 23 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

HILARIO ROMALEZ-ALCAIDE,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.\*

No. 02-71791

Agency No. A74-108-648

MEMORANDUM\*\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted September 23, 2003\*\*\*  
Pasadena, California

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

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\* We amend the caption to reflect that John Ashcroft, Attorney General, is the proper respondent. The Clerk shall amend the docket to reflect the above caption.

\*\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Hilario Romalez-Alcaide, a native and citizen of Mexico, entered the United States without inspection in 1984. In 1993 and 1994, Romalez-Alcaide was arrested by the Border Patrol and avoided immigration proceedings by agreeing to depart voluntarily to Mexico. After each voluntary departure, he returned to the United States, once the same night and the second time a day or two later. In 1998, Romalez-Alcaide was again arrested by the Border Patrol, and on this occasion he was placed in removal proceedings. He conceded removability but applied for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1). Cancellation was denied, in part because of Romalez-Alcaide's voluntary departures.

The Board of Immigration Appeals' majority opinion acknowledged that "[b]ut for his two very short departures under the threat of deportation, the respondent satisfied the 'continuous physical presence' requirement for cancellation of removal." *In re Romalez-Alcaide*, 23 I. & N. Dec. 423, 424 (BIA 2002) (en banc). Romalez-Alcaide contends that his voluntary departures did not constitute breaks in continuous physical presence, as defined by section 240A(d)(2) of the Immigration and Nationality Act. *See* 8 U.S.C. § 1229b(d)(2) (*"Treatment of certain breaks in presence. An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) if the alien has departed from the United States for*

any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.”). This argument is foreclosed by this court’s decision in *Vasquez-Lopez v. Ashcroft*, No. 01-71827, 2003 WL 22097880 (9th Cir. Sept. 11, 2003). The petition for review is therefore DENIED.